

JUL 30 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOEL SOLIS,

Defendant - Appellant.

No. 05-10411

D.C. No. CR-04-05112-AWI

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted July 22, 2008^{**}

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Joel Solis appeals from the 77-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

vacate and remand.

As a threshold matter, we reject the government's contention that we lack jurisdiction over this appeal of a within-guidelines sentence. *See United States v. Plouffe*, 445 F.3d 1126, 1128-29 (9th Cir. 2006).

Solis contends that the sentence is unreasonable because the district court stated that it gave "extra weight" to the Guidelines. We note that Solis preserved this contention by disputing at sentencing the Government's characterization of the Guidelines as presumptively reasonable. The district court did not have benefit of our recent holding in *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc), that a district court may not give the Guidelines more or less weight than any of the factors that are to be taken into account under 18 U.S.C. § 3553(a). *See id.* ("It would have been error had the judge actually attached a presumption of reasonableness to the Guidelines range or weighted the Guidelines range *more heavily* than the other § 3553(a) factors") (emphasis added); *see also Rita v. United States*, 127 S. Ct. 2456, 2465 (2007). Therefore, we vacate and remand for proceedings consistent with this disposition.

VACATED AND REMANDED.